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No. 90-1773

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1990

CORONATION SHIPPING COMPANY,

and

THE UNITED KINGDOM MUTUAL STEAM SHIP ASSURANCE ASSOCIATION (BERMUDA) LIMITED,

Petitioners,

v.

GLENN J. CREPPEL, JR.

Respondent.

Petition For A Writ Of Certiorari To The Court Of Appeal, Fifth Circuit, State Of Louisiana

RESPONSE TO WRIT OF CERTIORARI

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I. SUMMARY OF ARGUMENT

Petitioners have filed this Petition for Writ of Certiorari to the Court of Appeals, Fifth Circuit, State of Louisiana, seeking to have the writ granted by setting forth fears that defendants in maritime cases properly filed in state court are "homered" under state law inconsistent with federal law. However, Petitioners' argument is faulty because it is based on misrepresentations of case law from Louisiana courts. Petitioners also ignore the facts of this case as reviewed fairly and objectively by the Court of Appeals. Petitioners instead present to this Honorable Court a myopic view of the evidence rightfully disregarded by the Court of Appeals and the Louisiana Supreme Court.

II. ARGUMENT

A. THE EVIDENCE AS PRESENTED AT TRIAL

The Court of Appeals, in its decision in this matter reported at 572 So.2d 1051-58, spent more than half of its opinion reviewing what Petitioners self-servingly term as the conflicting evidence. The Appeals Court set forth in depth the testimony of the various witnesses and the documentary evidence on liability introduced by both sides. Respondent points out to this Honorable Court that Petitioners present only their "tunnel vision" view of the facts, ignoring the inconsistencies in their own evidence as found by the Court of Appeals in reversing the jury verdict.

Briefly, for example, Petitioners fail to quote the sections of the Steering Gear Manual entered into evidence

on the issue of whether or not only seamless steel tubing should be used in the hydraulic steering lines and cited by the Court of Appeals, as follows:

> "The Steering Gear is designed to give long and consistent trouble free service, but this service is dependent on the proper operation, care and regular maintenance of the equipment. This Manual gives detailed instructions and information relevant to the carrying out of these procedures and the instructions should be carefully followed to ensure that this trouble free service is realised [sic] in practice."

Id. at 1056-1057.

As the Court of Appeals stated, "the reasonable inferences from reading the manual as a whole, along with the testimony of the witnesses, indicate the material of choice for the system was steel, not copper." *Id.* at 1057. The deviation in the configuration of the system from steel to copper placed a duty on Petitioners to inspect the compromised system, a simple process which would have easily led to discovery of the improperly soldered fitting that even Petitioners' witnesses stated they would have replaced had they known about it. *Id.*

Similarly, in regard to the issue of the open isolation valve, the testimony of the witnesses conflicted but the Court of Appeals found that the same principles applied as with the material used for the tubing. The court cited the Steering Gear Manual once again.

1. "SMALL BORE PIPING (FIG. 10).

   7.1) In addition to the main pressure piping, seamless steel pressure piping of smaller bore (hence the general term

'small bore piping') is used in the following hydraulic lines:

Charge
Servo and Isolation Valves
Control
Pressure Gauge
Tank Charging
Drain & Cooling

2. "4.2) The oil pressure in a steering gear must of necessity, fluctuate according to the operational requirements of the gear. These fluctuations may impair the accuracy in reading of a pressure gauge, so it is recommended that the isolating valves associated with the gauges should be kept closed, except when actual readings of the gauges are being taken."

Id.

The Court then stated that the only reasonable inferences from the testimony were two. First, any deviation from the Steering Gear Manual by customarily leaving the valves open when steering in closed waters may have compromised the system. Second, and more importantly, "had the valve been closed, it clearly would have prevented the loss of the 150 liters of fluid, and the accident would not have occurred." *Id.*

In regard to the issue about the alarms, the Court of Appeals reviewed the evidence and again found as follows:

> [T]he low-level alarm either sounded too late or not at all, but was of no use in preventing the loss of steering fluid. Had it gone off timely, as intended by its design, the ship's crew could

> have closed the isolation valve, thus preventing the failed steering and subsequent collision. Thus, we conclude it was not set properly. *Id.*

Thus, as opposed to the one-sided view of the facts Petitioners still cling to, the evidence only led to one conclusion: Petitioners failed to operate a vessel with reasonable care under the circumstances, *i.e.*, failed to operate a safe vessel.

B. THE COURT OF APPEAL DID NOT ALTER THE MARITIME NEGLIGENCE STANDARD OF CARE.

Petitioners' first "reason for granting the writ" is that the Court of Appeals altered the maritime standard of care from "reasonable care under the circumstances" to "a duty to operate a safe vessel." This argument is unfounded. Clearly, as set forth above, the Court of Appeals objectively reviewed the evidence and found that the Petitioners did not operate their vessel with reasonable care under the circumstances. Petitioners are simply playing a game of semantics.

In support of their argument, Petitioners raise the unfounded fear that the "Court of Appeals' refusal to apply established maritime law has international implications far beyond this case." Petitioner's Brief at 14. Respondent submits that the international implications in this case are pure and simple: Vessel owners will not be allowed to operate a rudderless, free-floating ship in the Mississippi River with impunity, *i.e.*, total disregard for the integrity of the vessel's steering system. For Petitioners to argue under the facts of this case that the Court of Appeals held them to a higher standard is ludicrous.

The facts show that Petitioners failed miserably to exercise reasonable care under the circumstances.

C. THE LOUISIANA COURT OF APPEALS UPHELD BOTH THE UNIFORMITY DOCTRINES AND FEDERAL MARITIME LAW IN PROPERLY REVIEWING THIS MATTER ON APPEAL.

In making their argument that the Court of Appeals erred in its review of this matter, Petitioners' argument errs both in their review of Louisiana case law and their interpretation of the appellate review in this matter. Simply put, the Court of Appeals applied the correct standard of review, a standard Petitioners agreed to before the Court of Appeals.

Petitioners first argue that under *Daigle v. Coastal Marine, Inc.*, 488 So.2d 679 (La. 1986), the Louisiana Supreme Court has ignored federal maritime law and has applied its own version of law to maritime actions filed in Louisiana State Courts. Yet, it is Petitioners who ignore and misinterpret the plain language of *Daigle*.

The plaintiff in *Daigle* slipped on a vessel stairway and injured his back while a passenger on the vessel. *Id.* at 680. The Louisiana Supreme Court in a *per curiam* decision held that the case was controlled by Louisiana substantive tort law and procedural law under the Outer Continental Shelf Lands Act, 43 U.S.C. 1333 *et seq. Daigle* at 681-682. Thus, the Court held that "procedural law of Louisiana controls as to the scope of appellate review." *Id.* at 682.

In *Daigle* the Louisiana Supreme Court *did not* hold that Louisiana substantive and/or procedural law supplanted federal maritime law. In fact, it acknowledged that "[t]he federal standard of review for claims under federal maritime law is whether reasonable men could have arrived at a contrary verdict. [Citations omitted.] Factual findings are reviewed under the 'clearly erroneous standard.' " *Id.* at 681, n. 5. Because *Daigle* was not a case under general maritime law but one under the Outer Continental Shelf Lands Act, general maritime law with its law of appellate review were inapplicable.

In this case, the Court of Appeals did not review the evidence pursuant to Louisiana law but followed applicable general maritime law standards. The Court of Appeals found that the evidence led to "no other determination than that the jury was manifestly erroneous in its failure to find Coronation negligent." *Creppel* at 1057-1058. Although the Court used the term "manifest error," the Louisiana Supreme Court in *Rosell v. Esco*, 549 So.2d 840 (La. 1989) equated the "manifest error" standard of review with the "clearly erroneous" standard of review, even referring to it as one standard, the "manifest error – clearly wrong standard." *Id.* at 844. "Where there are two permissible views of the evidence, the fact-finder's choice between them cannot be manifestly erroneous or clearly wrong." *Id.* This review does not permit a *de novo* review of the facts. *Id.*

However, "[w]here documents or objective evidence so contradict the witness's story, or the story itself is so internally inconsistent or implausible on its face, that a reasonable fact finder would not credit the witness' story, the Court of Appeals may well find manifest error or

clear wrongness even in a finding purportedly based on a credibility determination." *Id.* at 844-845.

Indeed, in *Shroyer v. Grush*, 555 So.2d 534 (La. App. 4th Cir. 1989), *cert. denied*, 559 So.2d 140, a case cited by the *Creppel* court in discussing the appropriate standard of review, the standard for clearly wrong or manifestly erroneous was interpreted to be the same as that set forth in *McAllister v. United States*, 348 U.S. 19, 20 (1954), *i.e.*, "although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed."

Importantly, it should be noted that Petitioners cite *McAllister* as setting forth what they believe should have been the appropriate standard of review in this case. Petitioners' Brief at 18. Thus, it is clear that Petitioners' argument is much ado about nothing and should be denied summarily.

Additionally, as noted earlier, Petitioners believed the Court of Appeals' review under the "manifest error" standard was correct, stating in their brief to the Court of Appeals that "Plaintiff correctly states that review of the jury's verdict is governed by the 'manifest error' rule," citing *Rosell v. Esco*. Brief on behalf of Defendant-Appellee, Coronation Shipping Company and the United Kingdom Mutual Steam Ship Association (Bermuda) Limited. See Appendix hereto, p. 26.

Vaguely and in a confusing manner, Petitioners also attempt to argue that the standard of appellate review in this case should be even higher than the *McAllister* standard because Respondent failed to move for a directed verdict following the *close* of all evidence. Petitioners'

Brief at 18-19. There is doubt that this is legally correct because Petitioners' cite *Scheib v. Williams-McWilliams Co.*, 628 F.2d 509 (5th Cir. 1980) in support of this argument. *Scheib* is an admiralty case, but that portion of *Scheib* supporting Petitioners' argument quotes *Coughlin v. Capital Cement Co.*, 571 F.2d 290, 297 (5th Cir. 1978). *Coughlin* is an antitrust matter, not a maritime case, so it is doubtful that *Scheib* is even applicable. Petitioners' argument must fail.

Even assuming, for purposes of argument only, that Petitioners' argument is legally valid, which Respondent denies, Petitioners misquote *Scheib*, citing only half of the standard of review. The full citation with emphasis on the omitted portion reads as follows:

> The inquiry is restricted to "whether there was any evidence to support the jury's verdict, irrespective of its sufficiency, *or whether plain error was committed, which, if not noticed, would result in a 'manifest miscarriage of justice.'* " *Scheib* at 512, quoting *Coughlin v. Capitol Cement Co.*, 571 F.2d 290, 297 (5th Cir. 1978).

The force of the Court of Appeals' opinion shows that there was no evidence to support the jury's verdict and it amounted to a "manifest miscarriage of justice." The Court of Appeals stated that "it could arrive at no other determination than that the jury was manifestly erroneous in its failure to find Coronation negligent." *Creppel* at 1057-1058. In other words, the jury's verdict was a "manifest miscarriage of justice."

Finally, Respondent notes that Petitioners cite *Rosell v. Esco* in their brief when discussing the standard of appellate review. Petitioners' Brief at 20. This citation

indicates Petitioners know of the single "manifest error – clearly wrong" standard that is equivalent to the "clearly erroneous" standard. Petitioners state that despite this "theoretical" standard, however, the Court of Appeals "in practice" reweighed the facts or, in effect, reviewed the facts *de novo*.

That is not what the Court of Appeals did. The Court of Appeals reviewed the evidence objectively and did not reweigh it. The Louisiana Supreme Court agreed, denying writs of certiorari. Upon review, the Court of Appeals found clear error, *i.e.*, the evidence showed *only* that the Petitioners were negligent, with no other possibility to support the jury's verdict.

III. CONCLUSION

Petitioners seek to have this Honorable court issue writs of certiorari to the Louisiana Court of Appeals, Fifth Circuit, after it rightfully and legally reviewed this matter in depth and overturned a manifestly erroneous/clearly erroneous jury verdict. The Court of Appeals did not reweigh the evidence. It reviewed the evidence objectively and found the Petitioners fell woefully short of operating a vessel on the Mississippi River with reasonable care. Indeed, the Court of Appeals found Petitioners' operation of a 620-foot tanker without steering on the Mississippi River to be totally unreasonable.

In doing so, the Court of Appeals applied the correct standard of review under general maritime law and *did not* substitute Louisiana law. As has been shown, Louisiana Courts have construed the "manifest error" standard

of appellate review to be the same as the "clearly erroneous" standard.

Accordingly, Respondent respectfully suggests the decision of the Court of Appeals, State of Louisiana, merits no further review.

Respectfully submitted:

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COURT OF APPEAL

FIFTH CIRCUIT

STATE OF LOUISIANA

NO. 90-CA-425

GLENN J. CREPPEL, JR.,
Plaintiff-Appellant,

versus

CORONATION SHIPPING COMPANY,
Defendant-Appellee

Civil Appeal from the 24th Judicial District Court for the Parish of Jefferson, State of Louisiana, No. 359-213 "C", Honorable Joseph F. Grefer, Judge

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BRIEF ON BEHALF OF DEFENDANTS-APPELLEES, CORONATION SHIPPING COMPANY AND THE UNITED KINGDOM MUTUAL STEAM SHIP ASSURANCE ASSOCIATION (BERMUDA) LIMITED

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JURISDICTION OF THE COURT

This is an appeal from a final judgment after a jury trial on the merits in the 24th Judicial District Court for the Parish of Jefferson, the Honorable Joseph F. Grefer presiding. This Court has jurisdiction pursuant to La. Const. 1974, Art. V, Sec. 10(A) and La. Code Civ. P. art. 2083.

PRINCIPLES OF LAW

1. Review of the jury's verdict is governed by the "manifest error" rule. *Rosell v. Esco*, 549 So.2d 840, 844 (La. 1989). Where there is a conflict in the testimony, the

jury's evaluations of credibility and reasonable inferences of fact may not be set aside by the appellate court. *Id.* Where the jury's decision and findings are reasonable in light of the record reviewed in its entirety,

> the court of appeal may not reverse even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently. Where there are two permissible views of the evidence, the factfinder's choice between them cannot be manifestly erroneous or clearly wrong.

Id., 549 So.2d at 844.

2. The function of the jury, not the court of appeal, is to hear the evidence and make determinations regarding the credibility of the witnesses, "for only the factfinder can be aware of the variations in the demeanor and tone of the voice that bear so heavily on the listener's understanding and belief in what is said." *Rosell v. Esco, cited above.*

3. "The rule that questions of credibility are for the trier of fact applies to the evaluation of expert testimony, unless the stated reasons of the expert are patently unsound." *Lirette v. State Farm Insurance Co.*, 563 So.2d 850, 1990 LEXIS 1410 (La. 6/14/90).

4. "A party may not assign as error the giving or the failure to give an instruction unless he objects thereto either before the jury retires to consider its verdict or immediately after the jury retires, stating specifically the matter to which he objects **and** the grounds of his objection." La. Code Civ. P. art. 1793(C).

5. La. Code Civ. P. art 1793 **requires** that the party not only inform the trial judge **on the record** of the matter to which he objects, but also regarding the specific grounds of his objection. *E.g., Bienvenu v. State Farm Mutual Auto Ins. Co.*, 545 So.2d 581, 587 (La. App. 5th Cir. 1989); *Bechtel v. Entringer Bakeries, Inc.*, 422 So.2d

1299, 1302 (La. App. 5th Cir. 1982); *Anderson v. Fowler Trucking, Inc.*, 506 So.2d 1319, 1324 (La. App. 2d Cir.), *writ denied*, (La. 1987).

6. A blanket objection that does not state the specific grounds for objection does not comply with the provisions of Article 1973 and does not preserve the issue for appeal. *Brechtel*, 422 So.2d at 1302; *Anderson*, 506 So.2d at 1324.

7. An objection made in chambers and off the record does not satisfy the requirements of Article 1793 and does not preserve the issue for appeal. *Smiciklas v. Groendyke Transport, Inc.*, 505 So.2d 775, 778 (La. App. 2d Cir.), *writ denied*, 506 So.2d 1231 (La. 1987).

8. A mere expression of "concern" regarding the trial court's refusal to give a jury instruction does not preserve the issue for appeal. *Anderson v. Fowler Trucking, Inc.*, 506 So. 2d 1319 (La. App. 2d Cir.), *writ denied*, 512 So.2d 434 (La. 1987).

9. The presumption of negligence in favor of a party who sustains damage or injury as a result of a moving vessel colliding with a stationary dock or vessel has only been applied in favor of those directly injured or damaged as a result of the impact of the moving vessel with the stationary dock or vessel; it has not been applied to those who are indirectly injured as a result of the allision. *See, e.g., The OREGON*, 158 U.S. 186, 15 S.Ct. 804, 39 L.Ed. 943 (1895); *The Baltimore Steam Packet Co. v. The Flushing, College Point and New York Steam Ferry Co.*, 70 U.S. (3 Wall.) 164, 18 L.Ed. 85 (1866); *American Petrofina Pipeline Co. v. M/V SHOKO MARU*, 837 F.2d 1324 (5th Cir. 1988); *James v. River Parishes Co., Inc.*, 686 F.2d 1129 (5th Cir. 1982); *Weyerhaeuser Co. v. Vessel ATROPOS ISLAND*, 777 F.2d 1344 (9th Cir. 1985).

10. The adequacy of the instructions given to the jury are determined in light of the instructions as a whole; for reversal of a jury verdict to be in order, the charge must be so incorrect or inadequate so as to preclude

the jury from reaching a verdict based on the law and the facts. *E.g., Anderson v. Fowler Trucking, Inc.*, 506 So. 2d 1319, 1924-25 (La. App. 2d Cir.), *writ denied*, 512 So.2d 434 (La. 1987).

11. The trial judge is not required to give the exact instructions requested by a party, but only to charge the jury as to the applicable law in such a fashion as to reduce the possibility of confusing the jury. *Cuccia v. Cabrejo*, 429 So.2d 232, 235 (La. App. 5th Cir.), *writ denied*, (La. 1983).

12. The appellate courts exercise great restraint before reversing the verdict of the jury on the suggestion that the jury instructions are erroneous. *Cuccia v. Cabrejo, cited above; Creel v. S.A. Tarver & Son Tractor Co., Inc.*, 537 So.2d 752, 754 (La. App. 1st Cir. 1988).

13. Even where the jury is improperly instructed, "the appellate court may review the facts in the record and affirm the verdict if it is consistent with the evidence." *Broome v. Gauthier*, 443 So.2d 1127, 1134-35 n.3 (La. App. 4th Cir. 1983), *writ denied*, (La. 1984).

14. "[W]here the weight of the evidence is so nearly equal that a first-hand view of the witnesses is essential to a fair resolution of the issues," the appellate court should remand for a new trial rather than render a verdict in the case. *See Ragas v. Argonaut Southwest Insurance Co.*, 388 So.2d 707, 708 (La. 1980); *Bridevaux v. Marchand*, 543 So.2d 930, 933 (La. App. 1st Cir. 1989).

15. A tort plaintiff has a duty to mitigate his damages. *See Philippe v. Browing Arms Co.*, 395 So.2d 310, 318 n. 12 (La. 1981); *Schroeder v. Di Pascal Cabinet Co., Inc.*, 467 So.2d 1380 (La. App. 5th Cir. 1985); W. Prosser, *Law of Torts*, § 65 at 422 (4th Ed. 1971) (as cited and quoted in *Philippe*).

STATEMENT OF THE CASE AND ACTION OF THE TRIAL COURT

A. Introduction

This civil case arises from the October 20, 1987 allision between the M/T SEABRAVERY and the ACBL Barge Fleet, located on the east bank of the Mississippi River in Harahan. There is no dispute regarding the underlying facts giving rise to plaintiff's injury. The SEABRAVERY suddenly and unexpectedly lost her steering when a fitting on a steering system hydraulic line connecting a pressure gauge to the line unexpectedly separated, resulting in a loss of hydraulic pressure that rendered the vessel's steering inoperative. Plaintiff-appellant, Glenn J. Creppel, an employee of TT Barge Cleaning, an upriver facility, injured himself when he jumped from the tier of barges upon which he was working to another barge deck approximately ten feet lower.

A twelve person civil jury, after considering all of the testimony and evidence, fully exonerated Coronation Shipping Company and its protection and indemnity insurer, The United Kingdom Mutual Steam Ship Assurance (Bermuda) Limited (collectively referenced herein as "Coronation" or "defendant"), of all negligence regarding the steering failure. Appellant Creppel now questions this jury verdict. By discussing and arguing only the limited trial evidence adduced in his favor, by making emotional pleas, and by arguing matters that have little or no significance to the established cause of the collision, Creppel would have this Court believe that the jury's verdict is totally unreasonable and unsupported by the record. However, as the jury found, substantial testimony

and evidence, indeed the overwhelming evidence, demonstrates that Coronation was not negligent, and thus, was not responsible for plaintiff's injury.

The function of an appellate court is to review the jury's verdict, not to retry the case. Coronation submits that this Court, upon reviewing the testimony and evidence, should affirm the trial court's judgment and jury verdict in its favor. There is no factual or legal basis for reversing the jury verdict in this case.

B. The Allision

On October 20, 1987, New Orleans-Baton Rouge River Pilot J.T. Doyle boarded the M/T SEABRAVERY while she was dockside at Shell Oil Company's Norco facility (R.6, 1172-73).[1] Doyle was to take the vessel, which had just completed loading its cargo of Naptha, downriver to New Orleans (*id.*).

Approximately an hour before the vessel departed Norco, her crew thoroughly checked her mechanical gear, including her steering system (R.9, 1954, 1956-57). The inspection revealed no problems (*id.*). The vessel began her voyage and navigated flawlessly from Norco to 12 Mile Point (R.6, 1191). In negotiating 12 Mile Point, Pilot Doyle ordered the vessel's rudder ten degrees to port (R.6, 1176-78). The vessel responded without problem (*id.*). Next, he ordered an amidships rudder command to

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[1] Appellee cites to the record and transcript by using the designation "R" and the volume number, followed by the specific page references. Thus, record volume six, pages 1172 and 1173 are cited as "R.6, 1172-73".

stop the vessel's leftward swing (*id.*). The rudder did not respond, and the vessel was rapidly headed toward the east bank (*id.*, R.6, 1182). Pilot Doyle then gave a hard starboard rudder command, but the rudder did not respond (R.6, 1179). With collision then imminent, he blew the danger signal and radioed the Coast Guard and other vessel traffic in the area (R.6, 1183, 1192). Seconds later, and only about a minute after she lost her steering, the SEABRAVERY collided with the ACBL Barge fleet (R.6, 1187, 1189).

The ship's duty engineer became aware of the steering loss about the same time as the pilot. About a minute before impact, the steering system low pressure alarm sounded in the engine room (R.9, 1958-61). The duty engineer, while busy in the engine room executing the engine commands being ordered by the pilot, immediately sent the Third Engineer to check the steering equipment (*id.*). Seconds later, the vessel collided with the ACBL fleet (*id.*).

Immediately before the allision, plaintiff and his co-workers at the TT Barge Cleaning facility, located upriver from the ACBL fleet, were cleaning chemical barges (R.5, 1067-68). They noticed the vessel approaching the east bank about thirty seconds before collision when she was about 250 yards away (R.5, 1092). Plaintiff, who was working on the wing tank of a barge, heard a co-worker and his foreman yell for everyone to run (R.6, 1342-43). There was no emergency access to shore from barges upon which he was working (R.5, 1099). Plaintiff took a different route from his co-workers, because the barges were not secured tightly together by his employer, causing the barge to which he was going to jump to drift

away from the barge he was on (R.6, 1345; R.8, 1738-42). Plaintiff jumped down about ten feet to the deck of a neighboring barge, sustaining the right heel injury of which he complains (R.8, 1739).

C. The Cause of the Steering Failure

The SEABRAVERY, like most other oceangoing vessels, is equipped with an electrohydraulic steering system (R.9, 1913-14). That is, electric signals coming from the steering wheel on the ship's bridge activate valves in the steering machinery in the steering gear flat above the rudder. The valves, in turn, direct hydraulic fluid under pressure to move the ship's rudder (R.6, 1238). The system operates within set pressure limits (R.9, 1925, 1955, 1995), and the pressure is monitored by means of gauges connected to the pressure lines (*see generally* R.9, 1941, 1991-92). Any major breach of this pressurized system, such as a broken line, results in a loss of steering pressure to the rudder, and consequently, to loss of the vessel's steering (R.9, 2003-04).

The SEABRAVERY lost her steering when an internal fitting at a pressure gauge failed, causing hydraulic fluid to be pumped out of this open line (R.6, 1306).

D. The Jury Weighs Plaintiff's Allegations of Negligence

Based primarily on the testimony of a single expert witness, (whose expertise was questionable since he had never qualified as an expert in steering systems and had never sailed on an ocean-going vessel) and upon gross

misconstructions of the physical evidence and the testimony of other trial witnesses, plaintiff argued to the jury, and now argues to this Court, that defendant was negligent in the following respects: (1) in allowing copper tubing, rather than stainless steel tubing, to connect the pressure gauge to the steering hydraulic lines; (2) in failing to open up and inspect the fitting that failed; (3) in allowing the pressure gauge "isolation valve" to remain open while the vessel was maneuvering in the river; and, (4) in operating a vessel with inadequate and inadequately installed alarms on the steering system. See appellant's original brief, 6-21.

The jury, after weighing all the evidence, including the substantial evidence discussed below that plaintiff has chosen not to discuss in his brief, concluded that plaintiff's allegations of negligence were without merit.

1. The Copper Tubing

Plaintiff's counsel argued before the trial court and now argues before this Court that allowing copper tubing to connect the pressure gauge to the steering system hydraulic lines was improper because the steering gear manual (which plaintiff's counsel consistently referenced in his questions to the witnesses as a "Bible") allegedly "required" the use of stainless steel. See appellant's brief, 7-15.

Plaintiff's expert, Ralston Cole, whose maritime experience consisted of limited service in the Navy and experience with river towboats, who had never been qualified as an expert on steering systems, and who had never served aboard a merchant, ocean-going vessel, did

testify that the steering gear manual "required" the use of stainless steel, rather than copper, tubing to connect the gauge (R.6, 1248-49). Additionally, as plaintiff mentions, Coast Guard Lt. Cmdr. Scott Hartley, who investigated the casualty, indicated that copper tubing is not mentioned by the manual (R.6, 1312). However, contravening this testimony was substantial testimony and evidence, including the steering gear manual itself, which demonstrated that copper tubing was acceptable, that stainless steel tubing was not required, and that the use of copper tubing did not constitute negligence.

The steering gear manual itself (Trial Ex. P-36) does not prohibit the use of copper tubing to connect the pressure gauge to the steering hydraulic system. While the manual indicates that when the ship was built stainless steel tubing was used, there simply is no language in the manual "requiring" that stainless steel be used, or prohibiting the use of copper tubing in making repairs to the system.

Furthermore, with the exception of plaintiff's expert, no witness testified that stainless steel tubing was "required" and that copper tubing was prohibited.

Defendant's expert, Berend Haveman, had substantial maritime experience, having served as a chief engineer on ocean-going vessels, and having been employed in the maritime industry as a ship construction supervisor and as a marine surveyor for over twenty-five years (R.9, 1978-82). He explained that the SEABRAVERY was entered in Lloyds Register of Shipping, an international nonprofit organization that sets the rules and standards for ship repair and construction and that inspects and

classifies vessels for most nations worldwide (R.9, 1984-85). The SEABRAVERY had the highest Lloyds rating (R.9, 1985).

Haveman testified that Lloyds rules authorize copper or steel to be used for the connection in question, and that there was no reason why copper could not be used on the SEABRAVERY (R.9, 1986-87, 1989). As a marine surveyor, and as a former Lloyds surveyor, he would not require copper tubing to be changed (R.9, 1988). Furthermore, the manufacturer's original use of steel does not require replacement with steel (R.9, 1989). Regarding the steering gear manual, he stated that just because the manufacturer uses a particular material in the original construction, that does not make use of the material mandatory (R.9, 2002).[2] Indeed, Haveman testified that

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[2] Appellant contends that Haveman did not testify that the *mixing* of copper and steel tubing was common and proper, but only that copper *or* steel could be used. Thus, appellant suggests that this Court should draw an inference that Haveman did not approve the use of the copper tubing on the SEABRAVERY to connect the pressure gauge to the steering hydraulic piping. *See* appellant's original brief, 11-12.

Appellant's suggestion is absurd and is nothing more than an improper distortion of the witness's testimony. Haveman was not asked the specific question whether the *mixing* of copper and steel pipe was proper. However, Haveman's testimony, taken in its entirety, plainly indicates that the tubing as it existed on the SEABRAVERY was proper and did not violate any Lloyds rule. In fact, he specifically testified that he examined the copper piping connecting the pressure gauge on the SEABRAVERY and would not have required that the copper be replaced or removed (R.9, 1988). Thus, appellant's suggested inference cannot be drawn from Haveman's testimony. The

(Continued on following page)

Lloyds inspected the vessel on August 1, 1987, just nineteen days before the casualty, and was issued certificates of approval (R.9, 1994).

Nicholas Marinas, served as the Chief Engineer aboard the SEABRAVERY on from May 29, 1987 until August 9, 1987, and was a member of the crew on August 1, 1987, the date the vessel was sold to defendant and inspected by Lloyds (R.9, 1911, 1913, 1916, 1920). he had served on approximately fifteen vessels as a chief engineer (*id.*). He testified that the steering gear hydraulic lines were never changed or repaired during the time he was on board, because there appeared no sign of any leaks or anything else wrong with the lines (R.9, 1918-19). Chief Engineer Marinas explained that the steering gear hydraulic lines on the vessels that he had served were made of copper and steel, and that it was not unusual for such lines to be made of copper (R.9, 1915-18). The SEABRAVERY was not the only vessel upon which he had seen copper lines with steel fittings (R.9, 1937, 1939). Regarding the steering gear manual, Marinas testified that he had read and was familiar with the manual, and that it did not prohibit the use of copper tubing (R.9, 1936-37).

Chief Engineer Marinas was on board the vessel when she was inspected by the Lloyds classification inspector upon the change of the vessel's ownership (R.9, 1920). He testified that Lloyds inspected the vessel and

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(Continued from previous page)

jury obviously recognized the false premise forming the basis of appellant's argument in rejecting the plaintiff's contention that the copper pipe was improper.

issued her certificates, finding no deficiencies (R.9, 1920-24). During the course of this inspection, the Lloyds inspector checked the lines and made no requirements that they be changed (*id.*). Marinas left the service of the vessel for personal reasons on August 9, 1987, eleven days before the casualty (R.9, 1912).

Second Engineer Evagelos Drakas, who had served aboard nine vessels as a second engineer, and who was on board the vessel at the time of the casualty, testified that some of the ships on which he had served had copper lines and some had steel (R.9, 1950-51). The lines aboard the SEABRAVERY while he was aboard had never been replaced or taken apart, because the crew had never seen any signs of leakage (R.9, 1952-53).

Drakas was on board the SEABRAVERY for the Lloyds general inspection on August 1, 1987 (R.9, 1954-55). Lloyds found nothing abnormal and did not require the vessel to replace the copper tubing (*id.*; R.9, 1966). The vessel was also inspected by the U.S. Coast Guard, who did not require the vessel to replace the copper piping (R.9, 1966, 1969-70). Drakas testified that nothing in the manual prohibited the use of copper tubing to connect the pressure gauge (R.9, 1974). He stated that the problem was not the copper piping, but the way it was connected. Before the defendant purchased the vessel, the fitting was soldered on the *inside* underneath a nut such that it could not be detected and was not visible from the outside (R.9, 1966). This connection was not done during any time he served aboard the vessel [*i.e.*, it was not done during defendant's ownership of the vessel] (R.9, 1966).

After the casualty, Drakas personally installed a new gauge using copper tubing (R.9, 1965-66). The Coast Guard and Lloyds inspected the steering gear, including the connection, and Lloyds issued the vessel a classification certificate (R.9, 1966, 1969-70).

Lt. Cmdr. Scott Hartley, who investigated for the Coast Guard, testified that he reviewed the steering gear manual as part of his inspection (R.6, 1307). Hartley did not state, as plaintiff infers, that the steering gear manual "required" the use of stainless steel tubing. He merely testified, when asked by plaintiff's counsel, that copper tubing was not mentioned by the manual (R.6, 1312). Despite intense examination by plaintiff's counsel. Lt. Cmdr. Hartley testified that the U.S. Coast Guard found no negligence on the part of the SEABRAVERY in connection with this steering failure and casualty (R.6, 1330-31). Also, the U.S. Coast Guard approved reinstallation of the gauge on the SEABRAVERY using copper tubing (R.6, 1333).

2. Disassembly and Inspection of the Fitting

Plaintiff contends that the fact that the tubing leading to the pressure gauge was made of copper placed defendant on notice that it should have disassembled and inspected the fitting that failed. *See* appellant's brief, 9-15. Despite the opinion of plaintiff's expert, Ralston Cole, the overwhelming weight of the testimony supported the jury's conclusion that defendant breached no duty in not performing such disassembly. The testimony, discussed above, demonstrated that the use of copper complies with applicable standards and is not unusual. Thus, the jury

could have found, as they obviously did, that the mere use of copper tubing – an acceptable material – in and of itself gave rise to no extraordinary inspection duty. Furthermore, substantial testimony indicated that disassembly was unwarranted absent some sign of something wrong, and that there were no such signs before the casualty.

Chief Engineer Marinas testified that such disassembly of a connection is not required unless leakage or damage indicates that disassembly is required (R. 9, 1918-19). There had never been any damage to the lines or leakage, and the condition of the lines appeared very good (*id.*). He testified that the SEABRAVERY's steering system is inspected every four hours during a voyage, and more often when the vessel is maneuvering in rivers (*id.*). This inspection includes checking for any leaks along the lines (R.9, 1920).

Second Engineer Drakas likewise testified that the steering gear was inspected frequently – hourly by the duty officer (R.9, 1953-54). Drakas's inspection included the gauges and the lines connecting the gauges (R.9, 1952). During his time aboard the vessel, the steering hydraulic lines had never shown any signs of leakage, had never been damaged, and thus, were never taken apart or replaced (R.9, 1953-54).

Defendant's expert, Berend Haveman, testified that if a line or connection is not leaking, there is no way to tell whether it is about to fail (R.9, 1989-90). When lines are not leaking and there is no external defect, the normal practice does not require taking the lines apart (*id.*). Haveman testified that he examined the lines on the

SEABRAVERY after the collision, and that nothing externally indicated that the line would fail (R.9, 1988).

3. The Isolation Valve

The undisputed evidence was that the steering hydraulic system was equipped with an "isolation valve" to activate and deactivate the steering system pressure gauge. If that valve had been closed, no fluid would have flowed to the fitting that failed, and the casualty would not have occurred. Thus, plaintiff asserted at trial, and asserts again before this Court that defendant was negligent in leaving this valve open. He asserts that the steering gear manual required that the valve be closed, except when the crew was taking readings on the pressure gauge. *See* appellant's original brief, 15-19. Again, the jury was presented with substantial evidence demonstrating that defendant was not negligent in having the valve open. In fact, defendants may have been negligent had they closed the valve while navigating in confined waters, like the Mississippi River.

The manual itself states that the purposes for its recommendation is to protect the gauges, not to protect against a hydraulic leak or a steering failure as plaintiff argues:

> The oil pressure in a steering gear must, of necessity, fluctuate according to the operational requirements of the gear. These fluctuations may impair the accuracy in reading of a pressure gauge, so it is recommended that the isolating valves associated with the gauges should be kept closed, except when actual readings of the gauges are being taken.

(Trial Ex. P-36, Section 4.2; (reproduced at R.1, 228); R.9, 1945-46).

Additionally, the overwhelming testimony was that good seamanship practices *required* the isolation valve to be kept open while the vessel was maneuvering in confined waters, such as the Mississippi River.

Chief Engineer Marinas testified that the practice aboard the SEABRAVERY was to keep the gauge isolation valves closed while the vessel is at sea, but open while maneuvering in a river (R.9, 1927-28). The valve is kept open and the gauge is operational so that the crew can quickly observe the working of the equipment (*id.*). When questioned regarding the manual recommendation, Marinas testified that it only related to protecting the gauges, not to guarding against a steering failure (R.9, 1941, 1945-47).

Second Engineer Drakas likewise testified to the SEABRAVERY's practice regarding the isolation valve and the reason for keeping the valve open and the gauges operating in confined waters (R.9, 1956, 1972-73). He explained that when the vessel is maneuvering in a river, more pressure is on the lines [requiring that the pressure be frequently checked], and if the isolation valve were closed, a check of the system would require one to spend time to open the valve before the pressure could be checked (R.9, 1972-73). He disagreed with plaintiff's counsel's assertion that the better practice was to keep the valves closed in rivers (*id.*).

Finally, expert Haveman testified that the manual recommendation had nothing to do with preventing a steering failure, but only with protecting the accuracy of

the gauges (R.9, 1990-91). If the purpose of the recommendation was to protect against steering failures, the manual would have so stated (*id.*). Haveman testified the better practice was to keep the valve open while the vessel is maneuvering in confined waters, because frequent readings on the gauges are the earliest sign of a malfunction (R.9, 1991-92). He knew of no rule or regulation by the Coast Guard or any other organization that required the isolation valve to be closed (*id.*).

Again, Coast Guard Lt. Cmdr. Hartley and the Coast Guard found no negligence on the part of the SEABRAVERY leading to the collision, even though the valve was open. The endorsement of Hartley's supervisor on the Coast Guard report (Tr. Ex. D-21) confirmed that the purpose of closing the valve was not to prevent a steering failure but merely to protect the gauges.

4. The Alleged Inadequate Alarms

Plaintiff argued before the trial court, and again argues on appeal, that defendant was negligent, because the SEABRAVERY's steering system alarms were useless and in violation of applicable regulations. He contends that the vessel had a single hydraulic fluid reservoir rather than a dual reservoir system, and that the low fluid level alarm on the system was in violation of regulations that require a steering system to be placed back into service within forty-five seconds after the alarm sounds. He claims that the low pressure alarm was useless because Pilot Doyle "unequivocally" testified that no alarm sounded on the ship's bridge, and because this alarm did not sound until after the allision. He alleges

that Second Engineer did nothing after the low pressure alarm sounded, even though this alarm sounded almost a minute before the collision. *See* appellant's original brief, 19-21.

Despite plaintiff's allegations, the evidence and testimony indicated that the ship's alarms complied with applicable regulations, that the alarms did sound as required by the regulations, and that the ship's engineers responded to the alarms.

Contrary to plaintiff's assertion, the vessel was not in violation of any regulation for having a single hydraulic reservoir system rather than a dual reservoir system. Even plaintiff's expert admitted that the SEABRAVERY's single reservoir system met the applicable regulations (R.6, 1285). Expert Berend Haveman testified that the forty-five second switchover requirement (*i.e.*, part of the dual reservoir requirement referenced by plaintiff's counsel) applied only to vessels built after September 1984 (R.9, 1992-93). The SEABRAVERY was constructed in 1973 (R.9, 1992).

Additionally, the vessel's alarms were in accordance with international regulations. International regulations require the vessel to have a low hydraulic fluid alarm on the bridge and in the engine room; the SEABRAVERY had this alarm in both places (R.9, 1992). There was no requirement that the vessel have a low steering pressure alarm on the bridge (*id.*).

Furthermore, the evidence demonstrated that the alarms were functioning properly. Pilot Doyle indicated that he realized that the vessel lost her steering about one minute before impact (R.6, 1186-87). Second Engineer

Drakas testified that the low pressure alarm sounded about one minute before impact (R.9, 1961). Thus, clearly, the jury was justified in finding that the low pressure alarm worked as designed.

The low *level* alarm is not designated to immediately sound when the loss of steering *pressure* causes a steering failure. As the name implies, it is designed to sound when the fluid in the tank is low. Obviously, when a loss of *pressure* causes the steering loss, the low level alarm will not sound unless and until the pressure loss causes a sufficient fluid leakage to trigger the low level alarm (*see* R.9, 2003-04). Chief Engineer Marinas testified that the Lloyds inspector tested the low level alarm during his inspection just nineteen days before the collision and that it worked as designed (R.9, 1921-23). The oil was drained, and the alarm sounded when the tank was a little more than half full (*id.*). Afterwards, the Lloyds inspector issued a classification certificate (*id.*).

Likewise, the low level alarm worked in accordance with its designed function on the day of the collision. As expert Haveman testified, where steering is lost as the result of a loss of hydraulic pressure, as was the case here, although the *pressure* alarm will immediately sound (as it did here), the low *level* alarm is not going to sound immediately on a steering loss (R.9, 2003-04). Rather, the low level alarm will not sound until the pressure loss causes sufficient fluid to drain from the reservoir to trigger the alarm. Second Engineer Drakas testified that the low level alarm sounded in the engine room at about the time of impact (R.9, 1961-62). After the impact, he went to the bridge, where the low level alarm was still sounding (R.9, 1964).

Plaintiff relies on the testimony of Pilot Doyle, who he contends "unequivocally" testified that the low level alarm did not sound. However, Pilot Doyle did not "unequivocally testify," as plaintiff asserts. Rather, he testified that he was busy on the radio, blowing the danger signal on the ship's whistle and issuing commands, and could not positively recall whether or not an alarm had sounded on the bridge (R.6, 1194-95). Based on this evidence, the jury clearly was justified in finding that the ship's alarms complied with applicable regulations and were working properly.

Contrary to the plaintiff's assertions, the jury also was justified in finding that the vessel's crew responded when the low pressure alarm sounded. Second Engineer Drakas, who was busy operating the controls in the engine room, testified that immediately upon the low pressure alarm sounding, he dispatched the Third Engineer to the steering gear room (R.9, 1958-59). Seconds afterwards, he received the full astern engine order from the pilot on the bridge (*id.*). Pilot Doyle testified that at about this same time, the ship's captain on the bridge was in communication with the engine room and confirmed the loss of steering (R.6, 1198-99). Additionally, the engineer dispatched to the steering room took emergency action to stop the loss of fluid by bending the leaking hydraulic tube (R.9, 1963-64).

Thus, based on the lack of substantive evidence, the jury clearly could and did disbelieve plaintiff's allegations that the Second Engineer did nothing after hearing the alarm. Additionally since the low pressure alarm had already sounded warning the engine room of the steering loss, and as the pilot already knew of the loss of steering

from the rudder's failure to respond, the jury clearly could have concluded that the sounding of the low level alarm was an irrelevant "red-herring".

Finally, the irrelevance of the alarms to preventing this allision is demonstrated by the testimony of Pilot Doyle. Substantial time is required to change the momentum of a large, fully loaded vessel such as the SEABRAVERY. Thus, regardless whether or not the alarms worked, once the steering failed, the collision was unavoidable:

Q. Do ships of this magnitude respond instantaneously, or do they take some time to check their momentum?

A. You mean counter momentum?

Q. Yes.

A. Yes, it would lake a lot of time.

Q. Why is that?

A. Well, if you have all that weight going in one direction, if the rudder would have responded, it would take a long time for it to check out. It is just a lot of weight going in one direction.

Q. Would it be fair to say you don't stop a vessel of this size on a dime?

A. No.

Q. What did you tell the people on the VTS?

A. I don't know if I got in touch with them before the impact, but I was trying – I know what I was trying to tell them. I was trying to tell them it was a dangerous situation, and I was positive I was going to have a collision, something to that effect.

(R.6, 1185-86).

E. Action of the Trial Court

On October 4, 1987, after hearing all the testimony and viewing all the evidence, the jury returned a verdict for defendant (R.3, 587-90). The trial judge entered final judgment in accordance with the jury verdict on October 5, 1989 (R.3, 608).

Plaintiff subsequently filed a motion for judgment n.o.v. (R.3, 610-33), and defendant filed an opposition to this motion (R.3, 636-53). On January 16, 1990, the trial judge denied plaintiff's motion (R.3, 654). Plaintiff filed a motion and order for appeal, and the trial judge signed the appeal order on February 21, 1990 (R.4, 808).

ISSUES PRESENTED FOR REVIEW

1. Whether this Court should affirm the jury verdict and judgment of the trial court, because the verdict is supported by the evidence and is not manifestly erroneous.

2. Whether this Court should reject, as without merit, plaintiff's argument that the trial judge erred in instructing the jury, because (a) plaintiff failed to properly preserve the issue for appeal, and (b) the charges suggested by plaintiff had no application to this case, and (c) any error that may have occurred was harmless, considering the court's instruction to the jury as a whole.

3. Whether this Court should refuse plaintiff's invitation to reverse and render damages in his favor, particularly since the jury verdict in favor of defendant is not manifestly erroneous and is supported by the evidence.

4. Alternatively, in event that the jury verdict and trial judgment in favor of defendant is reversed, whether this

case should be remanded for a new trial, and if not, whether the damages sought by plaintiff are excessive and not supported by the evidence.

ARGUMENT

I. THE JURY VERDICT AND TRIAL COURT JUDGMENT ARE SUPPORTED BY THE RECORD AND ARE NOT "MANIFESTLY ERRONEOUS"

Plaintiff correctly states that review of the jury's verdict is governed by the "manifest error" rule. *Rosell v. Esco*, 549 So.2d 840, 844 (La. 1989). Under this rule, where there is a conflict in the testimony, the jury's evaluations of credibility and reasonable inferences of fact may not be set aside by the appellate court. *Id.* Where the jury's decision and findings are reasonable in light of the record reviewed in its entirety,

> the court of appeal may not reverse even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently. Where there are two permissible views of the evidence, the factfinder's choice between them cannot be manifestly erroneous or clearly wrong.

Id., 549 So.2d at 844. The function of the jury, not the court of appeal, is to hear the evidence and make determinations regarding the credibility of the witnesses, "for only the factfinder can be aware of the variations in the demeanor and tone of the voice that bear so heavily on the listener's understanding and belief in what is said." *Id.* Likewise, "[t]he rule that questions of credibility are for the trier of fact applies to the evaluation of expert testimony, unless the stated reasons of the expert are

patently unsound." *Lirette v. State Farm Insurance Co.*, 563 So.2d 850, 1990 LEXIS 1410 (La. 6/14/90).

The record in this case, summarized in the Statement of Facts, above, demonstrates that the jury's verdict for defendant-appellee is supported with regard to all four of plaintiff's allegations of negligence.

First, the Lloyds standard itself, as well as substantial testimony regarding this standard, indicated that the vessel was not negligent for not changing the copper tubing. Furthermore, the steering gear manual plainly did not "require," as plaintiff alleged, that stainless steel tubing be used. The jury was reasonable in finding that the copper tubing connecting the pressure gauge breached no standard of care. Additionally, as a fitting failed, and not the copper tubing itself, the jury clearly could have found that the use of the copper tubing was irrelevant, as it was not a causative factor in the collision.

Second, the jury properly found that defendant breached no duty regarding inspection of the connection that failed. The testimony demonstrated that the steering system was regularly inspected, and in fact, was inspected just before the vessel left her berth at Shell-Norco. More importantly, uncontradicted evidence proved that the steering system evidenced no external sign of any leakage or damage, and that absent such sign, a reasonable inspection did not dictate disassembling the steering system.

Third, testimony substantiated a jury finding that good seamanship required that the pressure gauge isolation valve be left open while the vessel navigated in confined waters, such as the Mississippi River. There is

no rule or regulation requiring the vessel to close the valve. Quick reading of the gauges is a necessity, and even the few seconds needed to open a closed valve could prove crucial.

Fourth, the evidence supported a jury finding that the ship's steering alarms were in accordance with international regulations, that they were functioning properly, and that the crew took the available precautionary measures when the steering alarm sounded. Furthermore, the evidence substantiated a jury finding that the workings of the alarms were irrelevant to the case. The sounding or non-sounding of the alarms, with the steering failure only a minute before collision and with the engine room and bridge already aware of the steering failure, had no bearing on the occurrence of this allision.

The mere existence of contrary evidence does not give rise to reversal. The jury, as the finder of fact in this case, was charged with making the credibility determinations, including such determinations with regard to the conflicting expert testimony. The jury resolved these conflicts, based on substantial evidence, in favor of defendant. Under *Esco* and *Lirette*, this Court is not free to reverse these credibility determinations.

Finally, plaintiff's citation of *Van Eyken v. Erie Railway Co.*, 117 F.712 (E.D.N.Y. 1902),[3] as a supposedly similar case, does not render the jury's verdict manifestly erroneous. In *Van Eyken*, a set screw on an old, mechanical steering gear system came loose, causing a steering system to fail. There, the trial judge, *sitting as the trier of fact*,

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[3] Appellant's original brief, 13-15.

found the vessel owner negligent for failure to inspect. However, merely because the *factfinder* in that case found that defendant negligent *as a matter of fact* did not require the jury, as the factfinder in this case to find Coronation negligent. This jury weighed the facts in this case and concluded, based on sound evidence, that defendant was not negligent. *Van Eyken* simply is irrelevant to this jury's factfinding and provides no basis for varying from the "manifest error" rule.

Nevertheless, *Van Eyken* is not "squarely on point," as plaintiff contends. Unlike the set screw which was not regularly inspected and which became loosened under the facts of that case, the evidence in this case is that the tubing and connections on the SEABRAVERY's steering gear were regularly inspected and were inspected shortly before this casualty. **Furthermore, plaintiff conveniently omits from his *Van Eyken* quotation the last five sentences of the quoted paragraph, which clearly distinguish that case. The *Van Eyken* court made clear that it based its fact finding of negligence regarding the loosened set screw on substantial physical evidence showing that the shaft to which the set screw had been connected regularly had come loose and had been readjusted on several occasions:**

> But the shaft bears palpable evidence that this set screw had not been disturbed since 1899, and that rust, with its unifying power, had not retained it in place. The dents are sufficiently far apart to show that the shaft had been shifted frequently in the sleeve, and that there had been readjustments of the parts. Why was it repeatedly set, unless the shaft as often had been loosened by accident or design? If loosened so

> frequently from use, surely inspection was necessary. If it was released, and reset purposely, then some inspection was customary.

Van Eyken, 117 F. at 715.

Understandably, plaintiff omitted these five sentences from his quotation. In contrast to the set screw in that case, the hydraulic connection in this case was regularly inspected and was not a moving part subject to wear or adjustment. Furthermore, unlike the *Van Eyken* set screw, there was no evidence of any history of problems with the hydraulic connection in this case. *Van Eyken* simply is a different case involving a different fact finder that reached rendered a judgment based on the peculiar facts of that case. It does not dictate, as plaintiff contends, that the jury verdict in this case be overturned.

Based on the entire evidence presented, the jury had more than sufficient basis to find that defendants were not negligent. The jury's verdict is not manifestly erroneous and should not be disturbed. In accordance with the commands of the Supreme Court in *Esco* and *Lirette*, this Court should affirm the jury verdict and trial court judgment in favor of Coronation.

II. THE TRIAL COURT'S REFUSAL TO INSTRUCT THE JURY REGARDING PRESUMPTIONS OF NEGLIGENCE

Plaintiff asserts that this Court should reverse the jury verdict and decide this case *de novo*, because the trial court refused to instruct the jury, in accordance with *James v. River Parishes Co.*, 686 F.2d 1129, 1132-33 (5th Cir. 1982), that an adrift vessel striking a stationary object is

presumed negligent. Plaintiff asserts that he preserved this error by objecting on the record. *See* appellant's original brief, 21-24.

Plaintiff's argument is without merit for three reasons: (A) plaintiff failed to preserve his objection and, in fact, explicitly waived his right to any such charge; (B) the charges proffered by plaintiff based on the *James* case and similar cases are inapplicable to the facts of this case; and, (3) the trial court, viewing the jury instruction as a whole, properly instructed the jury.

A. Plaintiff Failed to Preserve His Objection for Appeal in the Manner Required by Law, and, in Fact, Waived His Right to the Proffered Jury Instructions

1. Plaintiff failed to properly preserve his objection

La. Code Civ. P. art. 1793(C) provides in pertinent part that "[a] party may not assign as error the giving or the failure to give an instruction unless he objects thereto either before the jury retires or immediately after the jury retires, stating specifically the matter to which he objects ***and*** the grounds of his objection." This Court and other circuits have held that this article ***requires*** that the party not only inform the trial judge ***on the record*** of the matter to which he objects, but also regarding the specific grounds of his objection. *E.g., Bienvenu v. State Farm Mutual Auto Ins. Co.*, 545 So.2d 581, 587 (La. App. 5th Cir. 1989); *Bechtel v. Entringer Bakeries, Inc.*, 422 So.2d 1299, 1302 (La. App. 5th Cir. 1982); *Anderson v. Fowler Trucking, Inc.*, 506 So.2d 1319, 1324 (La. App. 2d Cir.), *writ denied*, 512 So.2d 434 (La. 1987). **A blanket objection that does**

not state the specific grounds for objection does not comply with the provisions of Articled 1973 and does not preserve the issue for appeal. *Brechtel,* 422 So.2d at 1302; *Anderson,* 506 So.2d at 1324. An objection made in chambers and off the record does not satisfy the requirements of Article 1793 and does not preserve the issue for appeal. *Smiciklas v. Groendyke Transport, Inc.,* 505 So.2d 775, 778 (La. App. 2d Cir.), *writ denied,* 506 So.2d 1231 (La. 1987).

On the record in this case, plaintiff's counsel made no more than an insufficient "blanket objection." He failed to state the grounds of his objection as required by Article 1793:

> BY THE COURT:
>
> Gentlemen, you have copies of the proposed charges and I have rearranged the sequence somewhat in order that I am going to give them, but you have a copy of what I propose to give. Mr. Morgan, before we begin I told Mr. Boudousque I would give him the opportunity to give his objections, so if you want to do that now.
>
> BY MR. MORGAN [Plaintiff's Counsel]:
>
> Yes, your Honor. The Plaintiff's objection to the Court's not giving Plaintiff's special charges 13, 14, 15, 16, 17, 18, 22, and in addition objection to the charge given on punitive damages.
>
> BY THE COURT:
>
> Objection is noted.

(R.10, 2221-22).

Plaintiff's objection did not state the specific grounds for objection as required by law. Accordingly, plaintiff's

jury instruction argument is not before this Court and provides no basis for reversing the jury's verdict.

2. Plaintiff waived his proffered charges

Furthermore, even assuming that off-the-record objections could be considered, plaintiff has no right to complain regarding the trial court's failure to give these charges, because he abandoned them in the trial court jury charge conference held off the record in chambers. During this conference, plaintiff's counsel, confident that the jury would return a verdict in plaintiff's favor, generally objected, but voluntarily withdrew his insistence that these charges be given. Plaintiff's counsel was confident that the evidence was in his favor, and that he did not need the charges to win the case. Now, after the jury has ruled against plaintiff, counsel insists that reversal is required by the court's failure to give these charges.

In *Anderson v. Fowler Trucking, Inc.*, 506 So.2d 1319 (La. App. 2d Cir.), *writ denied*, 512 So.2d 434 (La. 1987), the court rejected a plaintiff's attempt to appeal an objection, because in the trial court, counsel "never really objected to [the instruction], but merely expressed 'concern'. . . . " *Id.*, 506 So.2d at 1324. The appellate court found that "concern" was insufficient to preserve a jury charge objection.

While plaintiffs' counsel in this case went through the motion of "objecting" generally in this charge conference (as he also did on the record) before the jury retired, he shrugged off the failure to give the charges and failed to argue for their inclusion. Counsel exhibited no more than the "concern" discussed in *Anderson*. Thus, plaintiff

cannot now, in hindsight, be allowed to assert the absence of the instructions as a grounds for reversal.

B. The Trial Court Correctly Refused to Charge the Jury in Accordance with Plaintiff's Proffered Presumption Jury Charges Because the Law on Which They Are Based Is Not Applicable to This Case

Because plaintiff did not properly preserve the trial court's failure to give his proffered charges for appellate review, this Court need not consider the appropriateness of these charges. Nevertheless, a review of the case law upon which these proffered charges are based demonstrates that they have no application to the facts of this case.

Citing to *James v. River Parishes Co., Inc.*, 686 F.2d 1129, 1132-33 (5th Cir. 1982), plaintiff contends that the trial court erred in failing to instruct the jury that a drifting vessel that causes damage is presumed to be negligent. However, *James* is distinguishable and has no application to this case. There, James sustained injuries when the impact from a drifting barge to the vessel James was on threw James to the deck of his vessel. While James was unsure whether the drifting barge actually struck his vessel, there was no doubt that the drifting barge actually caused the impact that directly caused Jame's fall and resulting injury. *Id.*, 686 F.2d at 1331. The federal Fifth Circuit applied a presumption of negligence in favor of James, *i.e.*, in favor of a party *directly* injured as a result of the impact caused by the drifting vessel.

Likewise, in other tort cases applying the presumption, the party in whose favor the presumption was applied was the party *directly injured by an impact caused by the drifting vessel. See, e.g., The OREGON*, 158 U.S. 186, 15 S.Ct. 804, 39 L.Ed. 943 (1895) (presumption applied in a suit by the owner and crew of damaged, anchored vessel directly struck by a moving vessel); *The Baltimore Steam Packet Co. v. The Flushing, College Point and New York Steam Ferry Co.*, 70 U.S. (3 Wall.) 164, 18 L.Ed. 85 (1866) (presumption applied in a suit by an owner of a stationary, stranded vessel directly struck by a drifting vessel); *American Petrofina Pipeline Co. v. M/V SHOKO MARU*, 837 F.2d 1324 (5th Cir. 1988) (presumption applied in favor of dock owner whose dock was directly injured by a moving vessel); *Weyerhaeuser Co. v. Vessel ATROPOS ISLAND*, 777 F.2d 1344 (9th Cir. 1985) (presumption applied in favor of dock owner whose dock was directly damaged by vessels that broke away in stormy weather). Plaintiff has cited to no maritime case, the defendant's research has revealed no such case, where the presumption has been applied in favor of a party who was not *directly* injured or damaged as a result of the impact.

Plaintiff, Creppel, did not sustain his injury as the direct result of any impact between the SEABRAVERY and the barge, or even the group of barges upon which he was working. His injury did not result from being knocked down or thrown over by any impact caused by the SEABRAVERY, as were the injuries and damages caused in *James* and in other cases applying the presumption. The instant case does not fit within the class of cases to which the presumption applies, and the trial court correctly so recognized. Accordingly, even had plaintiff

properly preserved this issue for review by specifically objecting as required by law, the trial court correctly refused to give plaintiff's presumption charges.

C. The Instructions to the Jury, Considered in Their Entirety, Correctly Instructed the Jury on the Law Applicable to the Case and Provide No Basis for Reversing the Jury Verdict

Under Louisiana law, the adequacy of the instructions given to the jury is determined in light of the instructions as a whole; for reversal of a jury verdict to be in order, the charge must be so incorrect or inadequate to as to preclude the jury from reaching a verdict based on the law and the facts. *E.g., Anderson v. Fowler Trucking, Inc.*, 506 So.2d 1319, 1924-25 (La. App. 2d Cir.), *writ denied*, 512 So.2d 434 (La. 1987). The trial judge is not required to give the exact instructions requested by a party, but only to charge the jury as to the applicable law in such a fashion as to reduce the possibility of confusing the jury. *Cuccia v. Cabrejo*, 429 So.2d 232, 235 (La. App. 5th Cir.), *writ denied*, 434 So.2d 1097 (La. 1983). The appellate courts exercise great restraint before reversing the verdict of the jury on the suggestion that the jury instructions are erroneous. *Id.; Creel v. S.A. Tarver & Son Tractor Co., Inc.*, 537 So.2d 752, 754 (La. App. 1st Cir. 1988).

The trial court instructed the jury at length regarding the standard of care to applicable to defendant's conduct (R.10, 2231-32). It correctly instructed the jury concerning its duty to weigh the evidence, judging the credibility of the witnesses, and the burdens of proof that were applicable to the case (R. 10, 2228-30). The instructions given to the jury provided it with an adequate legal basis to

review the facts and to render a verdict. The trial court's instruction to the jury simply provide no basis for reversing the jury verdict in this case.

III. THIS COURT SHOULD AFFIRM THE JURY'S VERDICT; THERE IS NO FACTUAL OR LEGAL BASIS AUTHORIZING THIS COURT TO REVERSE AND RENDER A VERDICT IN FAVOR OF PLAINTIFF

Plaintiff submits that this Court should reverse the jury verdict, render judgment in his favor, and award him substantial damages for back and heel injuries, medical expenses, and loss of income. He also submits that this Court should award him punitive damages.

This Court need not address the issues, because plaintiff's assignments of error on liability lack merit. The evidence plainly supported the jury's verdict in favor of the defendant, and plaintiff's jury charge argument, even if it is properly before the Court, lacks merit. Furthermore, even where the jury is improperly instructed, "the appellate court may review the facts in the record and affirm the verdict if it is consistent with the evidence." *Broome v. Gauthier*, 443 So.2d 1127, 1134-35 n.3 (La. App. 4th Cir. 1983), *writ denied*, 445 So.2d 449 (La. 1984). Based on the overwhelming evidence substantiating the jury's verdict, even in the event of a jury instruction error, this Court should render a verdict in favor of defendant.

However, even viewing the liability evidence in a light overly favorable to plaintiff, the most that could be argued is that the evidence regarding negligence is conflicting. "[W]here the weight of the evidence is so nearly

equal that a first-hand view of the witnesses is essential to a fair resolution of the issues," the appellate court should remand for a new trial rather than render a verdict in the case. *See Ragas v. Argonaut Southwest Insurance Co.*, 388 So.2d 707, 708 (La. 1980); *Bridevaux v. Marchand*, 543 So.2d 930, 933 (La. App. 1st Cir. 1989). Thus, while the overwhelming weight of the evidence supports the jury verdict, and any judgment rendered by this Court should be one for defendant, at best for plaintiff, this case should be remanded for a new trial. This Court should not weigh the evidence against defendant based on a cold record, particularly where a jury, who saw the witnesses first-hand, has already assessed the evidence and found no negligence.

Nevertheless, even if this Court were to reverse and render, the injuries and losses for which plaintiff seeks recovery on appeal far exceed those justified by the evidence. Plaintiff asserts that he is entitled to recovery for pain and suffering resulting from an intra and extra articular fracture to his right os calcis (*i.e.*, a fractured heel), and for subtalar arthrodesis (fusion) surgery performed by Dr. John Watermeier on his right heel. He also claims he is entitled to pain and suffering for back injuries and for a hemi-laminectomy at L5-S1. He seeks $425,000 in pain and suffering damages and $29,315 in medical expenses. Additionally, plaintiff seeks $297,486 in loss of future wage damages, asserting that while he previously worked at a higher paying job, he now can only work at a minimum wage job. *See* appellant's original brief, 24-26.

There is no doubt that plaintiff sustained a heel injury. However, the medical evidence demonstrates that

except for plaintiff's own exacerbation of this heel condition, this injury would have healed itself in a short period of time. Regarding plaintiff's asserted back injury, the overwhelming medical evidence demonstrates that it did not result from this incident.

On the date of his accident, Dr. Scott Spann initially saw plaintiff in the Ochsner Foundation Hospital Emergency Room (R.9, 2050). Plaintiff made no complaints of back pain, and x-rays showed no back problem (R.9, 2050-52).

On the following day, plaintiff was seen by Dr. Gordon McFarland at Ochsner Foundation Hospital (R.9, 2057). Plaintiff had a heel fracture, but the fracture was not displaced (*id.*). He was discharged that day, October 21, 1987 (R.9, 2058). His hospital records indicated that he was given only two Vicodan tablets, indicating that he was not in serious pain (R.9, 2058-59). Plaintiff had no complaints of back or left leg pain that would indicate any type of back injury (R.9, 2058). Dr. McFarland next saw plaintiff a week later, on October 28, 1990; again, plaintiff had no complaints indicating any back injury (R.9, 2059-60). Dr. McFarland explained that a heel injury of the type sustained by plaintiff normally heals in six weeks and that he would expect that plaintiff should have been able to walk and return to a heavy manual labor job within about three months (R.9, 2060-61). He testified that early weight bearing on the injured heel is important to the recovery process (*id.*). He did not see any need for fusion surgery (R.9, 2063-65).

Dr. John Lockwood Ochsner, Jr. saw plaintiff at Ochsner on November 11, 1987, December 7, 1987,

December 28, 1987, and in January 1988 (R.9, 2010-23). On none of these occasions did plaintiff complain of back pain or any symptoms indicating any type of back injury (*id.*). Dr. Ochsner saw no need for surgery for plaintiff's foot injury (R.9, 2012). He recommended physical therapy – that plaintiff force himself to use his foot, despite the pain (R.9, 2013). Dr. Ochsner explained that a person with such an injury has to be encouraged to work through the pain by using the injured foot; otherwise the person will protect it and the foot will degenerate rather than get better (R.9, 2013, 2019-20, 2022). If the foot is not used, sympathetic dystrophy – a condition requiring pain management techniques – is more likely to develop (R.9, 2024-25). When Dr. Ochsner last saw plaintiff in January 1988, an appointment was scheduled for three weeks later; plaintiff, however, never returned (R.9, 2022-24). Dr. Ochsner stated that when he last saw plaintiff, he saw no need for fusion surgery (R.9, 2027, 2030).

Rather than continue the physical therapy recommended by the two Ochsner doctors, plaintiff then saw Dr. Watermeier, a doctor recommended by his counsel (R.6, 1359-60).

Dr. Watermeier saw plaintiff from January 22, 1988 through the time of trial, and during this time performed the foot fusion and back operation for which plaintiff claims damages. However, substantial medical testimony, including the testimony of Dr. Watermeier himself, questions the medical need for either of these operations, and further demonstrates that the claimed back injury and related surgery has no relationship to this incident.

On his first visit to Dr. Watermeier on January 22, 1988, plaintiff, with the help of the doctor's nurse, completed an extensive medical history questionnaire (R.7, 1453-59). On this questionnaire, plaintiff answered specific questions regarding the areas of his body suffering from pain (*id.*). He answered these questions indicating that he had no pain in his back or in his left leg or thigh (which would have indicated a possible back problem at L5-S1) (*id.*). On his next visit, plaintiff was asked to circle on a drawing of the human body the areas where he was experiencing pain; the only area circled was his right foot area (R.7, 1460-63). Rather than attempting to treat plaintiff's injury with physical therapy (which Dr. Watermeier simply dismissed as not having worked at Ochsner), Dr. Watermeier performed a fusion operated on plaintiff's foot on September 25, 1988 (R.7, 1499-1500).

Dr. Watermeier testified from his notes that he saw plaintiff regularly – on approximately nineteen occasions between plaintiff's first visit and March 1989 (R.7, 1450-1526). On none of these visits did plaintiff indicate that he had any left leg pain or other symptoms that would indicate a back injury at the L5-S1 level (*id.*). Additionally, during this time period, Dr. Watermeier ordered x-Rays, CAT scans and other diagnostic tests performed; none of these test indicated any back problem (*id.*). Suddenly, for the first time, *almost seventeen months after the accident*, plaintiff complained of left leg pain during his March 10, 1989 visit to Dr. Watermeier (R.7, 1526-28). Based solely on plaintiff's subjective complaints of pain on this occasion, and without performing any new objective tests to confirm a back problem, Dr. Watermeier diagnosed a disc herniation at L5-S1 and scheduled

plaintiff for back surgery (R.7, 1529-30). Incredibly, 18 days later, without performing any new tests confirming a herniated or ruptured disc, Dr. Watermeier performed this surgery on March 28, 1990 (R.7, 1530-31).

Substantial medical testimony questioned the wisdom of the surgical procedures performed by. Dr. Watermeier.

The two Ochsner physicians, as summarized above, saw no need for any type of operation; they believed that physical therapy, had plaintiff continued under their treatment, would have resulted in recovery of his foot and in plaintiff's return to work in approximately three months. Additionally, they observed no indication of any back injury resulting from his October 1987 accident.

Dr. Robert Steiner, the orthopedic surgeon who saw plaintiff at the request of the worker's compensation carrier – not the defendant – testified that he examined plaintiff on May 25, 1988, on January 26, 1988, and on September 19, 1989 (R.8, 1790-1836). On the first two visits, which pre-dated the back surgery, he saw no evidence indicating that plaintiff had any type of back injury at the L5-S1 level (R.8, 1792-98, 1812-15). He did not see any need for back surgery (*id.*). On September 19, 1989, almost five months after plaintiff's back surgery, plaintiff still was complaining of back pain (R.8, 1815-16).

Plaintiff's May 25, 1988 visit to Dr. Steiner was before plaintiff's foot surgery. Dr. Steiner testified that he would have treated plaintiff's foot pain with aggressive physical therapy and sympathetic block pain treatments (R.8, 1801-02, 1806-07). He explained that plaintiff had to use his foot to break the cycle of pain, and that surgery of the

type performed by Dr. Watermeier could actually aggravate the problem further (R.8, 1802-04). He saw no condition in plaintiff's foot that indicated surgery was needed (R.8, 1805-06). Plaintiff's visits to Dr. Steiner on January 26, 1988 and September 19, 1989 were after the foot fusion. During both visits, plaintiff continued to complain of pain in his right foot. (R.8, 1810-12, 1818-19). Dr. Steiner was not surprised that plaintiff's foot pain continued, as he did not believe there was sufficient evidence to perform the fusion operation (R.8, 1811-12).

Dr. Steiner testified that plaintiff's back complaints and back operation had nothing to do with his October 1987 accident. If plaintiff's disc injury had resulted from this 1987 accident, he would have expected an MRI scan conducted in June 1988 to have shown signs of the back injury (R.8, 1822-24). Furthermore, the discogram and CAT scan performed in February 1989 showed no sign of injury at L5-S1 (R.8, 1824). If a ruptured disc were found by Dr. Watermeier during surgery, it would have had to have occurred *after* these two tests were run in February 1989 (R.8, 1824-25). Furthermore, if a ruptured disk had resulted from the accident, he would have expected plaintiff to have had back pain within *weeks* of the injury and objective findings (confirmed by the above-discussed tests) within *weeks* of the incident (R.8, 1826-28). He saw no need for back surgery, performed so quickly after, and based solely on, a patient's initial, subjective complaint of back pain (R.8, 1828-29).

Additionally, the testimony of two doctors hired by plaintiff indicates that plaintiff's back injury did not result from plaintiff's October 1987 accident. Dr. April, a radiologist retained by plaintiff, testified that he saw

plaintiff on February 28, 1989 and reported that he observed no bulging or herniation at L5-S1 and that the area appeared normal (R.6, 1149-54). Dr. Jarrot, a neurosurgeon hired by plaintiff, saw plaintiff once – on November 18, 1987 (R.8, 1642). He saw no indication of any disc injury or nerve root impairment and saw no need for back surgery (R.8, 1655-69). He could not tell the jury that plaintiff suffered a disc injury as a result of the October 1987 accident (R.8, 1669-70).

Based on the medical testimony, even assuming that defendant is liable, plaintiff would be entitled to no recovery of medical expenses or pain and suffering for his back injury since it did not result from this accident. Regarding his foot injury, the evidence is that had plaintiff continued with his physical therapy, he would have been back at work at his same job approximately three months after his injury. Furthermore, the evidence indicates that his foot operation was unnecessary. Thus, at most, plaintiff would be entitled to pain and suffering for a three month foot injury and three months' lost wages. Plaintiff clearly is not entitled to the $425,000 in pain and suffering damages and the $29,315 in medical expenses he seeks in this case.

Finally, even assuming that defendants are liable, plaintiff's are not responsible for $297,486 in lost wages, as plaintiff asserts. The medical evidence plainly indicated that had plaintiff continued his physical therapy, he could have returned to his former job three months after his injury. Thus, assuming defendants could be liable, plaintiff is only entitled to three month's lost wages.

In any event, plaintiff's computation is based on the testimony of his economist expert, Dr. George Randolph Rice, who assumed that plaintiff could only work at minimum wage jobs after his injury. The testimony of Jennifer Palmer, defendant's vocational rehabilitation counselor, was that there were a substantial number of jobs that plaintiff could perform starting at four to five dollars per hour and increasing to ten dollars per hour within three years (R.9, 2079-85). Plaintiff clearly is not entitled to lost wages damages he seeks.

Thus, even assuming that defendants could be held liable, the damages to which plaintiff would be entitled are minimal. Louisiana law imposes a duty on a tort plaintiff to mitigate his damages. *See Philippe v. Browing Arms Co.*, 395 So.2d 310, 318 n. 12 (La. 1981); *Schroeder v. Di Pascal Cabinet Co., Inc.*, 467 So.2d 1380 (La. App. 5th Cir. 1985). The Supreme court noted in *Philippe* that

> The doctrine of avoidable consequences bars recovery of those damages which occur after the initial injury and which might have been averted by reasonable conduct on the part of the plaintiff. W. Prosser, *Law of Torts*, § 65 at 422 (4th ed. 1971). The Standard is that of a reasonable man under the circumstances.

Plaintiff clearly could have mitigated his economic, medical expense and pain and suffering damages by continuing his physical therapy. At most, assuming that defendant could be found liable, plaintiff is entitled to three month's lost wages and minimal pain and suffering damages; he is entitled to no medical expenses associated with the treatment and unnecessary operations performed by Dr. Watermeier.

Finally, plaintiff's claim for punitive damages is frivolous. Substantial evidence, summarized above, demonstrates that defendants were not negligent and clearly were not willfully and wantonly negligent as would be required to assess punitive damages.

CONCLUSION

Understandably, plaintiff has chosen to ignore and mischaracterize the evidence in this case, while making an emotional plea for reversal. Understandably, plaintiff is asking this Court to reweigh the evidence and render a finding in his favor. However, plaintiff has already had his day in court before a jury as the finder of fact. Substantial evidence supports the jury's fact finding that Coronation was not negligent, and there is no manifest error justifying a reweighing of the evidence. Plaintiff's jury instruction argument is not properly before this court, and even if it were, is without merit.

There is no basis for reversing the jury's verdict, and even if such basis existed, the substantive evidence would support this Court's entering judgment for defendant in accordance with the jury's verdict. Defendants

submit that this Court should affirm the jury's verdict in their favor.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that a copy of the above and foregoing Brief on behalf of Coronation Shipping Company and The United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Limited has been served upon:

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either by hand delivery or by placing same in the U.S. mail, first-class postage affixed thereto, on this 4th day of September, 1990, in accordance with the Rules of this Court.

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